

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pereira Broadcasting)	File Number: EB-06-SF-273
)	
Licensee of Station KIGS)	NAL/Acct. No.: 200732960004
Hanford, CA)	FRN: 0000021709
Facility ID # 51122)	

FORFEITURE ORDER

Adopted: September 7, 2007**Released: September 11, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of two thousand, eight hundred dollars (\$2,800) to Pereira Broadcasting ("Pereira"), licensee of AM radio station KIGS in Hanford, California, for repeatedly violating Section 73.49 of the Commission's Rules ("Rules").¹ On March 2, 2007, the Enforcement Bureau's San Francisco Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$7,000 to Pereira for failing to enclose the KIGS antenna towers within effective locked fences or other enclosures.² In this *Order*, we consider Pereira's argument that the fence was removed to eliminate an overgrowth of weeds underneath each of the towers, as well as Pereira's request that we reduce the forfeiture amount based on its inability to pay the amount proposed by the San Francisco Office.

II. BACKGROUND

2. On August 29, 2006, an agent from Enforcement Bureau's San Francisco Office inspected the antenna towers used by Pereira to broadcast KIGS. KIGS utilizes two antenna towers to broadcast its signal: antenna structure # 1016446, and antenna structure # 1016447. According to its license, the KIGS antenna towers are series fed and, therefore, are required to be fenced. Upon inspection of the antenna towers, the agent found no effective locked fences or other barriers surrounding the base of antenna structure # 1016446, or the base of antenna structure # 1016447. The agent observed that the chain-link fence was missing around each tower, with only the support posts remaining in place. The agent also observed that there was no perimeter fence surrounding the KIGS antenna site and that the KIGS antenna site is adjacent to a residence. During the inspection that day, the San Francisco agent discussed the missing fencing for the two KIGS towers with the general manager of KIGS and learned that the chain link fence surrounding the towers had been removed to cut down grass and weeds.³ The general manager indicated that the fencing was removed about two weeks prior to the date of the San Francisco agent's inspection.

¹ 47 C.F.R. § 73.49.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732960004 (Enf. Bur., Western Region, San Francisco Office, released March 2, 2007). We note that in the *NAL*, the licensee's name was listed as Perreira Broadcasting.

³ The agent also observed that the antenna structure registration numbers for the two AM towers, as well as any high voltage or radiofrequency radiation warning signs, had also been removed with the fencing.

3. On March 2, 2007, the San Francisco Office issued a *NAL* in the amount of \$7,000 to Pereira, finding that Pereira apparently repeatedly violated Section 73.49 of the Rules⁴ by failing to enclose the KIGS antenna towers within effective locked fences or other enclosures.⁵ Pereira filed a response (“*Response*”) on March 26, 2007, arguing that the fences had been removed from the towers to eliminate the overgrowth of weeds underneath the towers. Pereira also requested that the forfeiture amount be reduced based on their inability to pay.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”).⁸ In examining Pereira’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁹

5. Section 73.49 of the Rules states that antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.¹⁰ Individual tower fences need not be installed if the towers are contained within a protective property fence.¹¹ In adopting the *Report and Order* promulgating the most recent amendment of Section 73.49, the Commission stated that “a fencing requirement is necessary to protect the general public.”¹² At the time of the inspection on August 29, 2006, the chain link fence around the KIGS towers had been removed, and there was no perimeter fence around the property. Because there was no perimeter fence, the base fences around the individual AM towers must be effective.¹³ The KIGS antenna towers are series fed and, pursuant to Section 73.49, each of the two KIGS towers must be enclosed within an effective locked fence or other enclosure. The two towers, antenna structure # 1016446 and antenna structure # 1016447, both had the chain-link fence missing, with only support posts

⁴ 47 C.F.R. § 73.49.

⁵ Within the *NAL*, the San Francisco Office also issued a Notice of Violation (“*NOV*”) to Pereira for violation of Section 73.1350(a) of the Rules which states that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules and in accordance with the terms of the station license., 47 C.F.R. § 73.1350(a). Specifically, Section 73.1745(a) of the Rules states that no broadcast station shall operate at times or with modes or power, other than those specified and made part of the license.⁵ At the time of the inspection on August 29, 2006, the San Francisco agent found that KIGS did not change to nighttime pattern at 7:45 p.m. as required by the station license.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 C.F.R. § 73.49.

¹¹ 47 C.F.R. § 73.49.

¹² *Review of the Technical and Operational Regulations of Part 73, Subpart A, AM Broadcast Stations*, 59 Rad. Reg. 2d (Pike & Fischer) 927, ¶6 (1986) (“*Report and Order*”).

¹³ *See Butterfield Broadcasting Corporation*, 20 FCC Rcd 20237 (EB 2005).

remaining in place, making both towers easily accessible to the general public.

6. In its *Response*, Pereira admits that the chain link of the fences surrounding antenna structures 1016446 and 1016447 had been removed at the time of the inspection by the San Francisco agent. Pereira states that in order “to eliminate a fire hazard of over growth of weeds underneath each of the towers as required by the County Fire Inspection,” Pereira decided to use an herbicide that would not allow any growth for a period of five years. Pereira states that it was necessary to remove the chain link to spread the herbicide. Pereira also states that it intended for this process to take one week however it did not complete the task within that time period. Pereira further states that the chain link was replaced two days after the inspection by the San Francisco agent. Pereira also states that the residence referred to in the *NAL*, is one thousand feet away from the nearest antenna structure and a roadway and an irrigation canal that is twenty feet wide and seven feet deep separates the properties. Additionally, Pereira states that the entrance dirt road to the KIGS property is gated locked and monitored.

7. Pereira had a six foot tall chain link fence surrounding the tower, but had removed the fence and warning signs for grounds maintenance purposes. Pereira does not dispute that the AM tower base fences were down for two weeks.¹⁴ We do not dispute Pereira’s description of the residence and the irrigation canal, but we note that no perimeter fence encloses the property and, according to the San Francisco agent, the front driveway of the station is paved, has no gates, and that at the time of the inspection, an individual could walk from the street to the driveway and to the antenna structures without encountering a fence, enclosure, or irrigation canal. We accept Pereira’s representation that the removal of the protective base fence was temporary and required to comply with local requirements. These local requirements do not, however, relieve Pereira’s obligation to ensure that there is some type of effective fence or enclosure around the KIGS antenna structures at all times. Because this condition lasted for two weeks, we find that Pereira repeatedly failed to enclose the KIGS antenna towers within effective locked fences or other enclosures. We will, however, consider as an extenuating circumstance the effort by Pereira to comply with both local and federal requirements, and will utilize our discretion under Section 503(b)(2)(E) of the Act to reduce the proposed forfeiture from \$7,000 to \$5,600.

8. Pereira also requests that the forfeiture amount be reduced based on its inability to pay. To support their request, they supply three years of income tax data. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.¹⁵ While we find that Pereira repeatedly violated Section 73.49 of the Rules, based upon its inability to pay, we conclude that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement*, further reduction of the forfeiture to \$2,800 is warranted.

IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Pereira Broadcasting, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2,800 for repeatedly violating Section 73.49 of the Rules.¹⁶

¹⁴ Although the chain link was restored to the fences within two days after the San Francisco agent’s inspection, we find that this action cannot be a basis to reduce the forfeiture amount. The Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture. *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹⁵ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

¹⁶ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Pereira Broadcasting at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.